UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STEPHEN JOY,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 01-250-B-S
	)	
DR. SUSAN ENGLANDER, et al.,	)	
	)	
Defendants	)	

RECOMMENDED DECISION

Stephen Joy, an inmate at the Downeast Correctional Facility in Machiasport, Maine, has filed a complaint pursuant to 42 U.S.C. § 1983, asserting that he has received inadequate medical treatment at the institution. (Docket No. 1.) Joy names three defendants: Doctor Celia Englander,[1] Mark Caton, and Martin Magnusson. Defendants Caton and Magnusson have filed a motion to dismiss. (Docket No. 10.) Joy has filed an objection to this motion. (Docket No. 11.) I now recommend that the Court **GRANT** Defendants' motion and **DISMISS** the complaint as to Magnusson and Caton pursuant to it responsibilities under 28 U.S.C. § 1915(e)(2)(ii).

DISCUSSION

Joy's statement of claim is succinct. He was diagnosed with a hernia in December 2000. In September, 2001, he was seen by two physician's assistants and Dr. Englander. He is experiencing pain and discomfort. He has gone "unassigned" (presumably to an institutional work assignment) because he does not want the condition to get worse. As a result of his being unassigned he is unable to earn goodtime credits.

[1] Initially Joy named Doctor Susan Englander as a defendant. He filed a motion to amend the complaint to name Doctor Celia Englander instead (Docket No. 12) and I granted this motion by an endorsed order on March 13, 2002.

He is now being told that he does not have a hernia. When he filed an internal grievance, apparently Dr. Englander "testified" the hernia was slowly dissolving. The relief Joy seeks is proper medical care of his condition.

Defendants Caton and Magnusson contend that the complaint should be dismissed as against them pursuant to Federal Rule of Civil Procedure 12(b)(6) because it fails to state a claim for which relief can be granted. First they assert that Joy's claim is but a dispute between Joy and Englander concerning the proper diagnosis and treatment of his condition. As such, it does not rise to the level of deliberate indifference to a serious medical need, the standard that must be met to sustain a claim under the Eighth Amendment that a prisoner's medical care is tantamount to cruel and unusual punishment. Further, they argue, Joy had provided no factual allegations that pertain to Caton or Magnusson.

In his objection to the motion to dismiss, Joy states that his inadequate medical treatment is the result of policies and orders implemented by Magnusson, as the commissioner of the Department of Corrections. He does not state what those policies and orders are. Further Caton is carrying out these same unspecified policies and orders as the director of the Downeast Correctional Facility. Joy states that he has "made every effort at both levels of command to get a second opinion of a documented condition, a serious condition which is causing [him] undue pain and suffering." Yet, both Magnusson and Caton, who do not deny that Joy has a hernia, have demonstrated a deliberate indifference to Joy's health and welfare by not taking the action he requests to see that the hernia is treated or repaired. He states that he can show a more complete set of facts after discovery.

DISPOSITION

It seems that Joy's allegations against these two moving defendants as asserted in his complaint and his objection to the motion to dismiss[2] are not that Caton and Magnusson participated in the medical treatment decision but that they were responsible for the deprivation because of their policies and procedures as supervisors. As supervisors Caton and Magnusson can only "be held liable for what [they] do[] (or fail[] to do) if [their] behavior demonstrates deliberate indifference to conduct that is itself violative of a plaintiff's constitutional rights." Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 582 (1st Cir. 1994). "To succeed on a supervisory liability claim, a plaintiff not only must show deliberate indifference or its equivalent, but also must affirmatively connect the supervisor's conduct to the subordinate's violative act or omission. This causation requirement can be satisfied even if the supervisor did not participate directly in the conduct that violated a citizen's rights; for example, a sufficient casual nexus may be found if the supervisor knew of, overtly or tacitly approved of, or purposely disregarded the conduct." Id. (internal citations omitted). A supervisor, also, "may be liable under section 1983 if he formulates a policy or engages in a practice that leads to a civil rights violation committed by another." Camilo-Robles v. Hoyos, 151 F.3d 1, 6 -7 (1st Cir.1998).[3] Whatever may be Joy's precise theory as to the liability of Caton and

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[2] See Richardson v. United States, 193 F.3d 545, 548 (D.C.Cir.1999) (concluding that the District Court abused its discretion when it failed to consider a pro se plaintiff's complaint in light of his reply to the motion to dismiss).

[3] At least one court of appeals has overturned a dismissal of a complaint against prison officials who the plaintiff wished to hold accountable for oversight responsibilities vis-à-vis the provision of hernia treatment. See Johnson v. Lockhart, 941 F.2d 705, 707 (8th Cir. 1991) ("Abdication of policy-making and oversight responsibilities can reach the level of deliberate indifference and result in the unnecessary and wanton infliction of pain to prisoners when tacit authorization of subordinates' misconduct causes constitutional injury.")

Magnusson, on no theory could he hold these two defendant's accountable if he fails to plead an underlying constitutional violation.

In the present case the only factual allegations that can possibly implicate Magnusson and Caton arise in the context of Joy's attempts to obtain a second opinion or additional medical treatment through "both levels of command." Yet on the strength of Joy's own allegations, Magnusson and Caton know or reasonably should know that the treating physician expresses the belief that the hernia of which Joy complains is slowly dissolving. I can find no case which holds a warden or prison supervisor liable for a constitutional violation on those facts. Joy has not pled any facts concerning his actual medical symptoms other than generalized pain and discomfort. Nor has he pled that either prison official had any reason to know of any medically necessary treatment or procedure being withheld. Without objective discernible symptoms of Joy's allegedly deteriorating condition or a medical diagnosis that supports Joy's claim for additional treatment, it is difficult to fathom how Magnusson and Caton have abdicated their supervisory responsibility to provide oversight of the medical care to inmates.

In Estelle v. Gamble, 429 U.S. 97 (1976) the United States Supreme Court identified in the Eighth Amendment protection the "government's obligation to provide medical care for those whom it is punishing by incarceration." 429 U.S. at 103. The Court made clear, however, that "inadvertent failure to provide adequate, medical care" does not rise to the level of a constitutional violation; "Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Id. at 105-06.

In Farmer v. Brennan, 511 U.S. 825 (1994) the Court identified two requirements necessary to hold a prison official liable for an Eighth Amendment violation. First, the

alleged deprivation must be "objectively 'sufficiently serious.'" 511 U.S. at 834 (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)). Second, the defendant must have a culpable state of mind, meaning here that the defendants were deliberately indifferent to Joy's health. Id. Farmer articulates a "reckless disregard" state of mind standard, somewhere between negligence and acting with the intention to harm: "It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding the risk." Id. at 836. Farmer's is a subjective standard. Id. at 839. In articulating the parameters of this standard the Court further observed that, "an official's failure to alleviate a significant risk that he should of perceived but did not, while not a cause for commendation, cannot under our cases be condemned as the infliction of punishment." Id. at 838.

With the Farmer elements in mind, the First Circuit's pre-Farmer disposition in Watson v. Caton, 984 F.2d 537 (1st Cir. 1993) helps guide the disposition of Joy's complaint. The Watson panel addressed a motion to dismiss with respect to two types of medical treatment claims vis-à-vis the deliberate indifference standard, albeit not applied in the context of supervisory liability. In one count the prisoner/plaintiff complained that he came to the prison with an injury and a nurse at the prison refused him treatment because the injury had not occurred at the facility. Id. at 539. The Court concluded that this count was not frivolous because it alleged a "deliberate refusal to treat a serious medical condition of a prisoner" for a non-medical reason. Id. at 540.

In contrast, with respect to the plaintiff's count that alleged improper treatment of a back injury sustained at the prison the facts alleged were that the plaintiff was examined by a nurse who determined that his back would be okay and that the plaintiff wanted

more treatment, including physical therapy, but was told by doctors that drugs and rest would do the trick. Id. The Court characterized the dispute as one about the proper course of treatment, one that did not rise to the level of a constitutional violation.[4] Id. The Court remarked that the plaintiff "stated no facts suggesting more than simple negligence." Id. It concluded there was no abuse of discretion in the court's 28 U.S.C. § 1915 dismissal of this count as frivolous. Id.

On the basis of Watson I conclude that Joy's complaint against Magnusson and Caton should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(ii)[5] because Joy fails to state a claim for deliberate indifference. Viewing Joy's factual allegation in the best possible light, his claim is that, though he received a diagnosis and was treated for a hernia condition, Joy disagreed with the ultimate course of treatment for his condition. He proceeded through the prison grievance process and Magnusson and Caton, as a result of their policies, did not provide him with additional treatment He does not allege that they had any knowledge of his condition other than his generalized complaints of pain and discomfort and the treating physician's report that the hernia was slowly dissolving.

As Watson counsels this sort of disagreement about a medical condition falls short of the deliberate indifference standard Joy must meet. Analyzing this conclusion under Farmer, and assuming that his medical condition is objectively sufficiently serious, see Heard v. Sheahan, 253 F.3d 316 (7th Cir. 2001) (remanding a complaint alleging a failure to treat a hernia where a doctor had diagnosed the condition as requiring surgery

[4] Whether Joy's facts will ultimately state a constitutional violation as to Dr. Englander appears doubtful. However, at this juncture I am only considering the current allegations pertaining to Magnusson and Caton. I have given Joy the opportunity to present any additional facts as to these defendants in his objection to the motion to dismiss.

[5] The Watson court applied an earlier version of this statute in which the dismissal for being frivolous provision was housed in subsection (d). The panel remarked, "The difference between failing to state a claim and making a frivolous claim is in some situations a question of degree." Id. My analysis of Joy's complaint is that it, while not overtly frivolous, does fail to state a claim.

that was dismissed on statute of limitations grounds concluding that the continuing violation doctrine saved the plaintiff's claim), the state-of-mind that Joy's factual allegation supports as to Magnusson and Caton is no more than inadvertent failure to perceive a risk to a prisoner's well-being. See also Estelle v. Gamble, 429 U.S. 97, 107 (1976) (concluding that the dismissal for failure to state a claim was appropriate, observing, "A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice, and as such the proper forum is the state court").

CONCLUSION

For the reasons stated above I recommend that the court **DISMISS** Joy's complaint as to defendants Magnusson and Caton pursuant to 28 U.S.C. § 1915(e)(2)(ii) because it fails to state a claim for a constitutional violation.

NOTICE

> A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.
>
> Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

March 14, 2002

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Margaret J. Kravchuk
U.S. Magistrate Judge

PR1983

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 01-CV-250

JOY v. ENGLANDER, et al Filed: 12/18/01

Assigned to: Judge GEORGE Z. SINGAL

Demand: $0,000 Nature of Suit: 550

Lead Docket: None Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Prisoner Civil Rights

STEPHEN JOY STEPHEN JOY

plaintiff [COR LD NTC] [PRO SE]

DOWNEAST CORRECTIONAL FACILITY

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v.

SUSAN ENGLANDER, DR

defendant

MARK CATON SUSAN A. SPARACO, ESQ.

defendant [COR LD NTC]

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defendant (See above)